

REMARKS

The Examiner has rejected claims 1 – 3 under 35 USC 102(b) as being anticipated by Weis (US 28 45 673). He has further rejected claim 4 under 35 USC § 103(a) as being unpatentable over Weis in view of Kimblad (US 20030153946), he has rejected claims 5 and 8 under 35 USC 103 (a) as being unpatentable over Weis in view of Eposito (US 3 616 497), he has rejected claims 6 and 7 under 35 USC 103(a) as being unpatentable over Weis in view of Perkins (US 39 15 361) and he has rejected claims 9 – 11 under 35 USC 103(a) as being unpatentable over Weis in view of Kimblad (US 20030153946).

Weis (US 28 45 673) discloses a shoe accessory, that is a shoelace clip, for holding shoe laces in a taut condition on a shoe whereby the necessity of tying a knot in the shoelaces of a shoe is eliminated. It comprises a pair of arcuately curved relatively flat plate elements 12 and 13, which are secured together, one over the other by a bonding or cementing material 14. The bonding is established at the edges or corners of the two flat plate elements whereby the intermediate portions of the plate members are free of bonding material and thus allowed to flex freely. The lower plate 13 is provided with a central opening 15 for receiving the ends of shoe laces and the top plate 12 is provided with an H-shaped slot. The H-shaped slot defines a pair of tongues which extend toward each other and are upwardly yieldable to allow shoe-lace ends to be drawn therethrough and to be held in position by engagement between the tongues.

Although this clip structure is in principle similar to the clip according to the present invention, it is different in requiring a back-up plate 13 with an opening for properly guiding the shoe laces between the tongues 19 of the clamping plate 12.

But more importantly, a shoe lace clip can hardly be compared with a medical clip. It is definitely not in the same, not even in a similar, field of endeavor, that is, a shoe lace clip is in a field which has undoubtedly nothing to do with surgery or medical engineering.

Each person considered to be skilled in a particular field including a surgeon wears also shoes but is therefore not automatically made aware of or expected to be familiar with respect to developments in this field which is otherwise foreign to him or her. Furthermore it can hardly be said that he or she should have been aware of such shoe lace clips as a result of wear-

ing shoes because those clips have never found acceptance for their intended purpose. Has the Examiner ever seen anybody wearing shoes with shoe lace clips as disclosed by Weis?

US 2 845 673 furthermore includes no hint that the shoe lace clip described therein could be used for purposes other than holding shoe laces in a taut condition.

The present invention as defined in amended claim 1 resides in a medical clip comprising a single platelet (1) of an elastic bio-compatible material provided with a central H-shaped cutout so as to form in the platelet (1) a frame structure (5) with tongues (3) extending toward each other and having adjacent front edges (4) forming grasping elements, the frame structure (5) being curved and elastically biasing the front edges (4) of the tongues (3) toward each other.

As noted above the medical clip according to the present invention is not only in a completely different field of endeavor it is also different from the shoe lace clip of Weis in that it comprises only a single platelet 1. Furthermore, this platelet 1 consists of a bio-compatible material.

The Examiner states that the clip disclosed by Weis is capable of being considered a medical clip if for instance used on a surgeons shoe. The Examiner considers this comment probably to be funny, and it actually is. It is therefore also appropriate to say that the surgeon has probably never operated on a shoe. Aside of this, it is quite sure that no surgeon has ever worn a shoe with such a lace clip as such clips have apparently never been used.

Furthermore, the shoe lace clip as disclosed is not capable of being considered a medical clip for engaging the edges 8 of a wound of an organ 9 of a patient as those edges cannot first be pulled through a small opening adapted to accommodate shoe laces.

And certainly, a shoe lace clamp is not in the same problem solving area as a clamp for engaging the tissue of an organ for example after surgery. One relates to shoe accessories, the other to surgical equipment. The structural limitations have nothing to do with the field of endeavor.

Concerning furthermore, the Examiner's allegation that any plastic is inherently elastic and can be biocompatible, it is noted that this is not a correct statement either. A plastic is not inherently elastic: it is also incorrect to say that any plastic can be biocompatible – in fact most plastics are not: Biocompatible materials are generally characterized in that they do not cause any reactions in an organism and/or do not transfer any (for example, toxic) components to the

organism. But most plastic materials include certain additives to provide certain properties (for example, cyclohexane) which can be resorbed by the ambient and therefore exclude any biocompatibility. It can well be assumed that the plastic material used in US 2 845 673 for making shoe clips includes a diluent and consequently does not consist of a biocompatible material. But in any case, as noted above, the shoe lace clip disclosed by Weis is designed as a shoe lace clamp and is certainly not usable for the closing of wounds in medical or surgical applications.

Weis (US 2 845 673) can therefore not be considered to represent the state of the art and reconsideration of the rejection of claim 1 under 35 USC 102 as being anticipated by Weis is respectfully requested.

Claims 2 and 3 relate to two different shapes of the medical clamp as defined in claim 1. Claim 2 defines that the tongues 3 are bent inwardly from the curved frame structure 5 which, incidentally, is not disclosed by Weis. Claim 3 defines that the tongues 3 are bent outwardly. Both features are particular embodiments of claim 1 and therefore, should also be patentable so that reconsideration also of these claims is respectfully requested.

Concerning the Examiner's rejection of claim 4 as being obvious in view of Weis and Kimblad (US 2003 153946), which discloses a device for the treatment of a trio ventricular regurgitation using a clip made of a memory metal it is noted that memory metals for such purposes are of course known. Claim 4 however is considered to define a feature considered to be advantageous in connection with the medical clip as defined in claim 1 and, being dependent on claim 1, includes all the features of claim 1 so that it ought to be considered to be patentable together with claim 1. Reconsideration of the rejection of claim 4 under 35 USC 103 (a) as being unpatentable over Weis in view of Esposito (US 3 616 497), which discloses a clamping instrument for medical and surgical application with jaws with tooth surfaces, is respectfully requested. It is again noted that the features claimed in these claims, that is, that the tongues are serrated or corrugated, are considered to be advantageous in connection with the medical clip as claimed in claim 1 and claims 5 and 8 – depending on claim 1 – include all the features of claim 1 so that these claims, too, should be considered to be patentable together with claim 1.

Now, regarding claims 6 and 7 which define that the front edges of the tongues are provided with a non-slip coating or are provided with a rough surface, the Examiner cited Perkins

(US 3 915 361), which relates to a holster including a case for holding a hand gun and a holster mounting clip which is attached to the case and includes a surface provided with a non-slip coating for better holding it in engagement with a users clothing. In this case, the Examiner goes even so far as to compare a medical clip with a mounting clip for holding a holster for a hand gun. This certainly could be considered funny if the Examiner would not seriously reject a patent claim on that basis. But in any case, claims 6 and 7 depend on claim 1 and consequently ought to be considered to be patentable together with claim 1.

Claims 9 - 11 have been rejected by the Examiner under 35 USC 103(a) as being unpatentable over Weis in view of Kimblad. Kimblad has been discussed before as far as the clip shown therein is concerned. In the rejection of claims 9 -11, however, Kimblad is used to show that clip application apparatus with concentric operating members are known. The clip as disclosed by Kimblad however includes special crossbars 12, 13 attached to the arms 8 - 9 and 10 - 11 near the connecting end 14, 15 opposite the clamping end 16 and the support rod 19 extends through the space between the crossbars 12, 13 to hold the clamping ends open until the clip is pushed off the support rod 19 by the applicator tube 20, at which point the open clamping ends snap together.

In contrast, in the application apparatus according to the present invention, the clips are seated on the support rod 10, 11 directly with their engagement edges which are held open thereby.

This feature is not disclosed in, nor suggested by, the arrangement as disclosed in Kimblad (US 2003/0153946A1) so that it can hardly be said credibly that the apparatus as defined in amended claim 9 was obvious from Kimblad.

Reconsideration of the rejection of claim 9 as amended is respectfully requested.

Claims 10 and 11 relate to a particular arrangement wherein the clip application rod 10 is hollow and a cable extends through the clip application rod 10. These claims are dependent on claim 9 and should be considered to be patentable together with claim 9.

The new claim 11 has been added to cover the suturing structure of Figs. 5a and 5b as described on page 7, line 29, to page 8, line 25, wherein a hollow needle 18 extends through the hollow clip application rod 10 and a T anchor is disposed in the needle 18, which, after the needle has pierced some tissue, can be pushed out of the needle 18 by a wire 17 extending through the needle and can then be pulled back into engagement with the tissue by a thread 6.

Then a clip 14 can be pushed off the clip application rod 10 into firm contact with the tissue by engagement with the taut wire 6 so that the tissue is held together.

It is respectfully requested to take this new claim into consideration as it is simply an extension of the apparatus as already claimed in claim 9 and is clearly described in the description.

Allowance of claims 1 – 12 is solicited.

Respectfully submitted,



Klaus J. Bach, Reg. No. 26832